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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3849 OF 2006

Rafik Mahmood Nadaf .. Applicant

Versus

State of Maharashtra .. Respondent

Mr.S.R.Ganbavle for applicant

Mr.M.H.Mhatre, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 20th October 2006

P.C.

. The applicant who is aged 21 years has been arrested on 22nd March 2006 in connection with C.R.No.24 of 2006 alleging offences

punishable under section 302 of I.P.C. The C.R. was registered at Vadgaon Maval police station.

2. The deceased was father of the applicant. Applicant resides with his mother, brothers and sister at Ambedkar Nagar, Vadgaon. Mother of applicant has given her statement so also one Rafiq Mahmood and Asif who are sons of the deceased. All have confirmed the fact that the deceased was addicted to liquor and was alcoholic. He used to repeatedly create scene in the house after consuming alcohol. He was assaulting mother of the applicant. He was not looking after the family and was not maintaining them properly as well. There were disputes and quarrels all the time because all monies would be squandered away by father due to his addiction. On the date of the incident, the applicant had returned from work and he saw that his father firstly abusing his mother in filthy language. The applicant also saw the father beating the brother Asif. The persons residing in the

vicinity and neighbourhood intervened. The applicant told deceased not to create such scenes. But the father threatened him initially. Thinking that the incident has come to an end and there would be no further problems, the applicant and the others went inside the house. However, again the father picked up quarrel with the applicant and this time, the applicant was held by the father. He banged applicant's head against the wall. The applicant firstly tried to calm down the situation so also the other brothers intervened. The fight took place between father and son and the applicant thereafter, brought a knife from the house and gave a blow with the same on the neck of the deceased father and that is how, the father sustained injuries and succumbed later on to the same.

3. Learned Advocate for the applicant submits that the incident is unfortunate. The applicant has not ran away from the fact of

assault by him on his own father. However, he has invited my attention to the statement of the mother which corroborates the incident. It also corroborates drinking habit and the pain and anguish caused by the father to all the family members. It is in such circumstances and on account of the unfortunate conditions that the incident has taken place. The applicant is young boy and allowing him to languish in jail would make him hardened criminal. There are no antecedents. The applicant is working in a company and supporting the family. Even monies earned were not utilised for the family and if an opportunity is now given to him, surely he will take care of all of them. The mother is also ailing and in such circumstances, although, the offence is serious, applicant deserves bail.

4. The learned A.P.P. submits that the offence is serious. There is confession recorded so also the eye witnesses have supported the prosecution version. This is a case where the

applicant is bound to be convicted. In such circumstances, the bail should not be granted.

5. In my view, ordinarily, in such offence, the sole test laid down by the Supreme Court if applied, bail cannot be granted.

6. However, that alone is not the test and the Supreme Court in a recent decision has laid down broad parameters. In the decision reported in (2005) 8 S.C.C.21, the Supreme Court has observed thus:-

> ". The matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on

> bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused."

7. In my view, this is not a case where the applicant had any intentions to kill his father. However, such incidents are not ruled out when the family life is shattered because of

alcoholism. The menace of chronic alcoholism is something which cannot be ignored or brushed aside. It takes its toll when the bread-earner is indulging in the same. The atmosphere in a family needs to be peaceful and congenial. When children are exposed to such incidents, impact of the same is lasting. When the children see their father assaulting mother, then their reaction is bound to be strong and sudden. sometimes for no fault of the family members and only on account of chronic alcoholism the father creates a scene. If assault takes place due to these reasons, then a sympathetic view needs to be taken. In the peculiar facts and circumstances of this case and when the applicant has no antecedents, he deserves to be enlarged on bail, with stringent conditions. Hence following order:-

i) The applicant arrested in connection with C.R.No.24 of 2006 registered with Vadgaon Maval Police

Station shall be enlarged in the sum of Rs.15,000/- with one or two local sureties in the like amount.

ii) The bail is granted subject to condition that the applicant will remain present before the concerned investigating officer of Vadgaon Maval Police Station once a week on every Friday between 5.00 p.m. and 7.00 p.m. till conclusion of the trial.

iii) The order of bail will be given effect only after the applicant furnishes to the investigating officer the details about his place of residence and address where he proposes to stay after he is enlarged on bail. The applicant will not change his residential address thereafter till the conclusion of trial without prior intimation to the Investigating officer.

iv) The bail is granted subject to condition that the applicant shall not directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

v) The applicant shall cooperate with the learned Trial Judge for expeditious disposal of the case. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vii) Application is disposed of in

above terms.

viii) Parties to act on an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)